

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION**

IN RE LARRY FRYE,

Bankruptcy Case Number  
18-80873-CRJ-13

Debtor,

LARRY FRYE,

Plaintiff,

Adversary Proceeding No.  
20-80072-CRJ

v.

SN SERVICING CORPORATION, US BANK  
NATIONAL TRUST ASSOCIATION AS  
TRUSTEE FOR LSF10 MASTER  
PARTICIPATION TRUST, and  
CALIBER HOME LOANS, INC.

Defendants.

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT AND APPLICATION  
FOR APPROVAL OF ATTORNEY'S FEE**

Comes Now, Larry Frye (the "Debtor") with Caliber Home Loans and U.S. Bank Trust National Association as Trustee for LSF10 Master Participation Trust (together with the Debtor, the "Movants") and hereby move this Court pursuant to 11 U.S.C. § 105 and Rule 9019 of the Federal Rules of Bankruptcy Procedure for the entry of an Order approving the compromise and settlement described herein. In support of the Joint Motion to Approve Compromise, Movants show unto the court as follows.

**JURISDICTION AND PROPOSED NOTICE**

1. The Motion is being brought pursuant to 11 U.S.C. § 105 and Rule 9019(a) of the Bankruptcy Rules.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. In accordance with Bankruptcy Rules 9019(a) and 2002, the Motion is being served on all parties-in-interest and all parties filing an appearance notice.

### **FACTUAL BACKGROUND**

4. This adversary proceeding arises from Frye's allegations that SN Servicing Corporation, U.S. Bank Trust National Association as Trustee of the Bungalow Series IV Trust, U.S. Bank Trust National Association as Trustee of the LSF10 Trust, and Caliber Home Loans, Inc. violated the automatic stay imposed by 11 U.S.C. § 362.
5. In this adversary proceeding, Frye alleges that SN Servicing Corporation, U.S. Bank Trust National Association as Trustee of the Bungalow Series IV Trust, U.S. Bank Trust National Association as Trustee of the LSF10 Trust, and Caliber Home Loans, Inc. violated the Automatic Stay by contacting Frye by letter in an attempt to collect a prepetition debt after the bankruptcy was filed.
6. Caliber Home Loans and U.S. Bank Trust National Association as Trustee for LSF10 Master Participation Trust denies all wrongdoing as alleged in the Adversary Proceeding.

### **NEW PROCEDURES IMPLEMENTED BY THE DEFENDANT TO AVOID FUTURE VIOLATIONS OF THE AUTOMATIC STAY**

7. In the Court's July 31, 2020 Order Vacating Deadlines [Doc. 29], the Court directed the parties to "include the summary of new procedures implemented by the Defendant(s) to avoid future violations of the automatic stay" with their settlement documents submitted to the Court. The July 31, 2020 Order applies to Defendants U.S. Bank and Caliber, as well as co-defendant SN Servicing Corp., as SN Servicing Corp. also reached a separate pro tanto settlement with Plaintiff. As applied to Caliber and U.S. Bank, the violation of the automatic stay alleged in the Complaint relates to a mortgage statement sent by the current loan servicer, SN Servicing Corp., on May 6, 2020, after the loan had already been transferred from Defendants Caliber and U.S. Bank (as the parties described at the July 14, 2020 Status Conference). There are no other alleged violations of the

automatic stay that occurred while Defendants Caliber and U.S. Bank had the underlying loan. Defendants Caliber and U.S. Bank are nonetheless mindful of their obligation to avoid violating the automatic stay.

#### **TERMS OF THE PROPOSED SETTLEMENT**

8. After negotiation, and in the interest of avoiding the uncertainties associated with litigation, Plaintiff Larry Frye and Defendants Caliber Home Loans and U.S. Bank Trust National Association as Trustee for LSF10 Master Participation Trust have agreed to a pro tanto compromise and settlement of the claim on the terms and conditions set forth herein.

9. The terms of the proposed settlement are as follows:

- a. Caliber Home Loans and U.S. Bank Trust National Association as Trustee for LSF10 Master Participation Trust shall pay to Frye's counsel a total of \$1,000.00 to settle any and all claims arising from this adversary proceeding.
- b. This amount includes all costs and fees, including but not limited to Frye's Attorney's fee.
- c. Pursuant to 11 U.S.C. §362(k)(1), Caliber Home Loans and U.S. Bank Trust National Association as Trustee for LSF10 Master Participation Trust shall pay to Frye's counsel a total of \$1,000.00 to settle any and all claims arising from this adversary proceeding. Debtor's counsel requests to retain \$800.00 of the settlement representing 12.90 hours for the work performed in the preparation and prosecution of the adversary proceeding at an hourly rate of \$350.00. Counsel has worked diligently on this case since May 18, 2020 and will continue to do so until the proceeding closes. Counsel has reduced his fee from \$4,515.00 to \$800.00. Caliber Home Loans and U.S. Bank Trust National Association as Trustee for LSF10 Master Participation Trust shall also pay \$100.00 to the Debtor as allowed by his exemptions and \$100.00 to Michele Hatcher, Chapter 13 Trustee, to be applied toward the Debtor's bankruptcy estate. Defendants are to disburse funds to Larsen Law, P.C. within 30 days

from the date of this order. Larsen Law, P.C. will distribute the funds as set out in this motion.

### **RELIEF REQUESTED**

10. The parties jointly request that this Court approve the pro tanto settlement that has been reached by Plaintiff Larry Frye and Defendants Caliber Home Loans and U.S. Bank Trust National Association as Trustee for LSF10 Master Participation Trust in which all of the issues in the claim will be resolved as to those parties. The settlement of this claim is a result of good faith, arm's length negotiations between the respective attorneys for the parties and after a thorough review of the merits of the case.

11. The settlement of the claims in this adversary proceeding meets all applicable legal standards and is well within the range of reasonableness.

12. The approval of a compromise and settlement in a bankruptcy case is within the sound discretion of the court and will not be disturbed or modified on appeal unless approval or disapproval of the settlement is an abuse of discretion. *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602-603 (5<sup>th</sup> Cir. 1980). To properly exercise this discretion, the bankruptcy court must consider whether the compromise proposed “falls below the lowest point in the range of reasonableness.” *Anaconda-Ericsson, Inc. v. Hessen (In re Teltronics Servs. Inc.)*, 762 F.2d 185, 189 (2d Cir. 1985) (internal citation omitted).

13. The Eleventh Circuit has held a bankruptcy court must consider and evaluate the following factors:

- (a) the probability of success in the litigation;
- (b) the difficulties, if any to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending the litigation; and,
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Wallis v. Justice Oaks II Ltd. (In re Justice Oaks II Ltd.)*, 898 F.2d 1544, 1549 (11<sup>th</sup> Cir. 1990). When making an evaluation, a court must not rest its approval of the settlement on a resolution of the ultimate factual and legal issues underling the

compromised disputes. *Teltronics* at 189. Rather, the court should consider the probable outcome of the litigation, including its advantages and disadvantages, and should make a pragmatic decision based on all equitable factors. *Florida Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5<sup>th</sup> Cir. 1960).

14. Federal Rule of Bankruptcy Procedure 9019 provides that, after conducting a hearing on notice to creditors, the bankruptcy court may approve a compromise and settlement. To assure a compromise is proper in a given case, the court must be apprised of the necessary facts for an intelligent, objective, and educated evaluation and compare the “terms of the compromise with the likely rewards of litigation.” *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968).

15. The settlement proposed in this motion meets the standard for approval under Federal Rule of Bankruptcy Procedure 9019 and is in the best interests of the bankruptcy estate. The settlement was reached after thorough analysis of the merits of Frye’s claims and the defenses of Caliber Home Loans and U.S. Bank Trust National Association as Trustee for LSF10 Master Participation Trust with regard to the claims asserted in the adversary proceeding.

**WHEREFORE**, the parties ask this Court to enter an order approving the settlement described in this motion.

/s/ John C. Larsen  
John C. Larsen  
Attorney for the Debtor/Plaintiff,  
Larry Frye

OF COUNSEL:  
LARSEN LAW P.C.  
1733 Winchester Road  
Huntsville, Alabama 35811  
(256) 859-3008  
[john@larsenlaw.com](mailto:john@larsenlaw.com)

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing has been served upon all creditors listed on the mailing matrix and all attorneys of record by electronic notice and/or by depositing a copy thereof in the United States Mail, properly addressed and postage prepaid, on this the 28<sup>th</sup> day of September, 2020.

Grant A. Premo  
Attorney for Caliber Home Loans, Inc. and U.S. Bank Trust National Associations as Trustee  
for LSF10 Master Participation Trust  
BRADLEY ARANT BOULT CUMMINGS, LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203  
[gpremo@bradley.com](mailto:gpremo@bradley.com)

A copy was served electronically on Michele Hatcher, Chapter 13 Trustee, and Richard Blythe, Bankruptcy Administrator, on this the 28<sup>th</sup> day of September, 2020.

/s/ John C. Larsen

Label Matrix for local noticing  
1126-8  
Case 18-80873-CRJ13  
NORTHERN DISTRICT OF ALABAMA  
Decatur  
Mon Sep 28 13:21:33 CDT 2020

U. S. Bankruptcy Court  
400 Well Street  
P. O. Box 2775  
Decatur, AL 35602-2775

Ccs Collections  
725 Canton St  
Norwood, MA 02062-2679

Ditech Financial LLC fka Green Tree Servicin  
P.O. Box 6154  
Rapid City, South Dakota 57709-6154

Franklin Collection Service, Inc.  
Attn: Bankruptcy  
Po Box 3910  
Tupelo, MS 38803-3910

IRS  
John Blackwell  
801 Broadway M/S MDP 146  
Nashville, TN 37203

Joyce White Vance  
US Attorney  
1801 4th Ave  
Birmingham, AL 35203-2101

State of Alabama Department of Revenue  
50 North Ripley St.  
Montgomery, AL 36132-0001

US Attorney General  
US Department of Justice  
950 Pennsylvania Ave NW  
Washington, DC 20530-0001

Insolvency Section Internal Revenue Service  
801 Broadway  
MDP 146, Room 285  
Nashville, TN 37203-3816

U.S. Bank Trust, N.A., as Trustee for LSF10  
RAS CRANE, LLC  
10700 ABBOTT'S BRIDGE ROAD, SUITE 1  
Duluth, GA 30097-8458

AT&T Corp  
% AT&T Services, Inc.  
Karen Cavagnaro, Esq.  
One AT&T Way, Suite 3A104  
Bedminster, NJ 07921-2693

Convergent Outsourcing, Inc  
Po Box 9004  
Renton, WA 98057-9004

Family Security Credit  
2204 Family Security Pl  
Decatur, AL 35603-5500

HH Digestive Disease Center  
c/o Franklin Collection Service  
PO Box 3910  
Tupelo, MS 38803-3910

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

Merchants Ad  
56 N Florida St  
Mobile, AL 36607-3108

T Mobile/T-Mobile USA Inc  
by American InfoSource LP as agent  
PO Box 248848  
Oklahoma City, OK 73124-8848

US Bank Trust NA  
SN Servicing Corporation  
323 5th Street  
Eureka, CA 95501-0305

John C. Larsen  
Larsen Law, P.C.  
1733 Winchester Rd  
Huntsville, AL 35811-9190

U.S. Bank Trust, N.A., as Trustee for LSF10  
13801 Wireless Way  
Oklahoma City, OK 73134-2500

Alabama Department of Revenue  
Legal Division  
P.O. Box 320001  
Montgomery, Alabama 36132-0001

(c)DITECH  
332 MINNESOTA ST STE E610  
SAINT PAUL MN 55101-1311

Fox Collection Center  
Attn: Bankruptcy  
Po Box 528  
Goodlettsville, TN 37070-0528

Huntsville Emergency Physicians Group  
c/o Franklin Collection Service  
PO Box 3910  
Tupelo, MS 38803-3910

(p)INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

Richard Oneal  
Asst US Attorney  
1801 4th Ave  
Birmingham, AL 35203-2101

U.S. Bank Trust, N.A., As Trustee  
For LSF10 Master Participation Trust  
Caliber Home Loans, Inc.  
13801 Wireless Way  
Oklahoma City, Ok 73134-2500

Allison Frye  
251 Saddle Rock Court  
Harvest, AL 35749-8272

Larry Frye  
251 Saddle Rock Court  
Harvest, AL 35749-8272

Michele T. Hatcher  
Chapter 13 Trustee  
P.O. Box 2388  
Decatur, AL 35602-2388

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Internal Revenue Service  
PO Box 21126  
Philadelphia, PA 19114

Addresses marked (c) above for the following entity/entities were corrected as required by the USPS Locatable Address Conversion System (LACS).

Ditech  
332 Minnesota St Ste 610  
Saint Paul, MN 55101

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Caliber Home Loans, Inc.	(u)Ditech Financial LLC,	(u)U.S. Bank Trust National Association
(u)U.S. Bank Trust, N.A., As Trustee for LSP1	(u)US Bank Trust NA	(d)U.S. Bank Trust, N.A., as Trustee for LSF1 13801 Wireless Way Oklahoma City, OK 73134-2500

End of Label Matrix  
Mailable recipients 30  
Bypassed recipients 6  
Total 36